

Attorney Docket No.: J6834(C)
Serial No.: 10/667,922
Filed: September 22, 2003
Confirmation No.: 9900

REMARKS

Claims 1, 4 and 8-11 were rejected for obviousness-type double patenting over claims 1-2 of U.S. Patent Application Publication bearing Serial No. 10/697,608 (Barrow et al.). Applicant traverses this rejection.

The Publication with Serial No. 10/697,608 lacks essential features of the present claims 1, 4 and 8-11. The Publication claims lack mention of any solid carrier. Secondly, the Publication claims fail to disclose fragrance that is deposited onto any form of solid carrier much less a carrier constituted of destructure starch. For these reasons applicant considers this rejection inappropriate.

Applicant's distinctions over the Barrow et al. claims were found unpersuasive to the Examiner. She has focused on the general statement that fragrances may also be included in the compositions of Barrow et al. at levels ranging from about 0.05 to about 5%, preferably between 0.1 and 3% by weight. Attention was drawn to the specification at page 14, paragraph 43. Beyond the generic mention, the word "fragrance" appears in only one further instance. It is found in Example 3 within Table V. Therein is delineated an aqueous liquid formulation into which fragrance has been dispersed.

Applicant's claims require that the fragrance be deposited onto a solid carrier. Based on the disclosure in Barrow et al., the skilled chemist would obtain no teaching nor have motivation to place fragrance other than within a formula. Deposition onto a surface of a solid starch is simply beyond the reference.

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Applicant's second distinction also has been rejected as being unpersuasive. Barrow et al. lacks any mention of a solid carrier, much less a carrier constituted of destructure starch. The Examiner counters that cosmetic compositions may generally have a solid, emulsion or liquid base. She cites the Abstract of U.S. Patent 5,382,611 (Stephoe et al.).

In essence, the Examiner rejects applicant's claims over a combination of the Barrow et al. publication with that of Steptoe et al. Applicant submits that even with the combination of art, a skilled person would still not arrive at the claimed invention.

Barrow et al. U.S. '608 is about liquid compositions. The chemically modified starches disclosed therein are dissolved in aqueous liquids, many of which may be liquid emulsions. See all of the Examples. There are no solid compositions. Neither is the disclosed starch in a solid carrier state. Fragrances are formulated into these liquid systems.

Were a skilled chemist to utilize the starch materials of Steptoe et al., this chemist would dissolve the starch into the liquid systems of U.S. '608. There would be no resultant solid cosmetic. Neither would the fragrance of U.S. '608 be deposited onto the Steptoe destructure starch. Fragrance would be dissolved in the liquid phases. By contrast, applicant claims a fragrance that it is deposited onto rather than into a cosmetic.

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Further, the Examiner contends that any time one heats starch the result is a destructurized version. This is not so. Steptoe accomplishes destructurization through use of an injection molding machine or extruder. Elevated temperatures and pressures are utilized to achieve the destructurization. See column 1, lines 16-22. A somewhat milder approach was achievable by Steptoe et al. through use of catalysts. But this still required a closed system with elevated temperatures. See column 1, lines 49-55. No such treatment is performed by U.S. '608.

Claims 1-6 and 8-17 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent 5,925,380 (Roulier et al.) in view of U.S. Patent 6,248,338 (Muller et al.) and in further view of U.S. Patent 5,382,611 (Steptoe et al.). Applicant traverses this rejection.

Applicant's invention is distinguished from the references by the feature of fragrance being deposited onto the solid destructurized starch carrier. Neither Rouiller et al., Muller et al. nor Steptoe et al. disclose this feature. A *prima facie* case of obviousness has not been established.

The Examiner has acknowledged this argument but considered it not persuasive. Yet no reasoning has been provided in her rebuttal.

The only comment relative to the fragrance issue is found at page 8 of the Final Office Action. It appears that the Examiner presumes that a *prima facie* case has been established regarding the deposition onto the solid carrier. But the reason has not been enunciated.

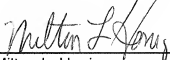
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Instead, the Examiner simply skips to the comparative Example 21. This comparative showing is peremptorily dismissed because of "the limited scope of the study".

Applicant's view is that with the Examiner failing to establish a *prima facie* case of obviousness, applicant has no burden of demonstrating unobvious results. Nonetheless, applicant has provided a showing in Example 21 that deposition onto a destructure starch in comparison to placement onto a non-destructurized starch resulted in a fragrance evolution over a more prolonged period of time. While the showing may not be as robust as the Examiner might prefer, nevertheless it is a demonstration of unexpected results. Even if the Examiner believes a *prima facie* case has been presented (which applicant disagrees with), the Examiner nonetheless must present cogent reasons for dismissing the comparative experiments. It is inappropriate to simply ignore it.

In view of the foregoing comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Milton L. Honig", is written over a horizontal line.

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